19

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1924.

No. [redacted]27

THE MELLON COMPANY, PLAINTIFF IN ERROR,

vs.

CHARLES McCAFFERTY, AS COUNTY TREASURER, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

FILED OCTOBER 31, 1924.

(32,226)

(23,926)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 291.

THE MELLON COMPANY, PLAINTIFF IN ERROR,

vs.

CHARLES McCAFFERTY, AS COUNTY TREASURER, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 6, 1914.

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a *Return to Writ.*

UNITED STATES OF AMERICA,
Supreme Court of Oklahoma, ss:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, together with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of the said Supreme Court of Oklahoma, in Oklahoma City, Oklahoma, this 6th day of October, 1913.

[Seal Supreme Court, State of Oklahoma.]

W. H. L. CAMPBELL,
Clerk of the Supreme Court of Oklahoma,
By JESSIE PARDOE, *Deputy.*

1 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to Chas. McCafferty, as County Treasurer, and John W. Riley, as County Clerk of the County of Oklahoma, State of Oklahoma, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the clerk of the Supreme Court of the State of Oklahoma, wherein The Mellon Company, a corporation, is plaintiff in error and you are defendants in error, to show the cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done in that behalf.

Witness, the Chief Justice of the Supreme Court of the State of Oklahoma, this 24th day of Sept., 1913.

SAMUEL W. HAYES,
Chief Justice Supreme Court of Oklahoma.

Attest:

[Seal Supreme Court, State of Oklahoma.]

W. H. L. CAMPBELL,
Clerk Supreme Court of Oklahoma,
By JESSIE PARDOE, *Deputy.*

Service of the above citation acknowledged this 26th day of Sept. 1913.

D. K. POPE,
JOHN W. CHOATE,
By Deputy.

Filed Sep. 27, 1913. W. H. L. Campbell, Clerk.

2 [Endorsed:] In the Supreme Court of the United States of America. The Mellon Company, a corporation, Plaintiff, vs. Chas. McCafferty, as County Treasurer of the County of Oklahoma, State of Oklahoma, Defendants. Citation. Filed Sep. 27, 1913. W. H. L. Campbell, Clerk. Douglas B. Crane, Attorney for Plaintiff.

3 In the Supreme Court of Oklahoma.

Case No. 2620.

THE MELLON COMPANY, a Corporation, Plaintiff,
vs.
CHAS. MCCAFFERTY, as County Treasurer, et al., Defendants.

Petition for Writ of Error, Assignment and Prayer.

Considering itself aggrieved by the final decision of the Supreme Court in rendering judgment against it in the above entitled case, the plaintiff hereby prays a writ of error from the said decision and judgment to the U. S. Supreme Court, and an order fixing the amount of the supersedeas bond.

And the said Mellon Company assigns the following errors in the records and proceedings of the case:

The Supreme Court of Oklahoma, erred in holding and deciding that Chapter 73 of the Session Laws of 1910 of the State of Oklahoma, were in force at the time this cause of action arose, and,

That Section 5771 of the Compiled Laws of Oklahoma, 1909 had been repealed at that time, and,

That said decision is repugnant to the Constitution of the United States, and in contravention thereof.

The said errors are more particularly set forth as follows:

The Supreme Court of Oklahoma erred in holding and deciding—

First. That said decision, holding that said Chapter 73 was in force, takes property without due process of law, contrary to the fifth amendment of the Constitution of the United States.

Second. That said judgment is in conflict with the fourteenth amendment of the Constitution of the United States as it
4 enforces a law which abridges the privileges and immunities of a citizen of the U. S. and deprives a person of property without due process of law, and denies to said person within its jurisdiction the equal protection of the laws.

For which errors the plaintiff, The Mellon Company, prays that the said judgment of the Supreme Court of the State of Oklahoma, dated July 22 1913, be reversed and a judgment rendered in favor of the plaintiff company and for costs.

J. H. EVEREST,
DOUGLAS B. CRANE,
Attorney- for The Mellon Company.

Filed Sep. 23, 1913. W. H. L. Campbell, Clerk,

STATE OF OKLAHOMA,
Supreme Court, ss:

Let the writ of error issue upon the execution of a bond to Chas. McCafferty, as county treasurer, et al. in the sum of $2,477.44 such bond when approved to act as supersedeas.
Dated Sept. 23, 1913.

SAMUEL W. HAYES,
Chief Justice Supreme Court of Oklahoma.

Attest:

[Seal Supreme Court, State of Oklahoma.]

W. H. L. CAMPBELL, *Clerk,*
By JESSIE PARDOE, *Deputy.*

Filed Sep. 23, 1913. W. H. L. Campbell, Clerk.

5 [Endorsed:] In the Supreme Court of Oklahoma. The Mellon Company, Plaintiff, vs. Chas. McCafferty et al., Defendants. Petition for Writ of Error, Assignment and Prayer. Douglas B. Crane, Attorney for Plaintiff.

5½ In the Supreme Court of the State of Oklahoma.

THE MELLON COMPANY, a Corporation, Plaintiff in Error,
vs.
JOHN W. RILEY, as County Clerk, et al., Defendants in Error.

Upon application of the plaintiff in error, I do consent that the writ of error in the above entitled cause be amended to read in the sixth line: "and Charles McCafferty, as county treasurer, et al."

SAMUEL W. HAYES,
Chief Justice.

6 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Oklahoma, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Mellon Company, a corporation, and Chas. McCafferty, as County Treasurer et al., wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the — was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or

statute of, or commission held under the United States, and t
decision was against the title, right, privilege, or exemption specia
set up or claimed under such clause of the said Constitution, treat
statute or commission; a manifest error hath happened, to the gre
damage of the said The Mellon Company, as by its complaint a
pears. We being willing that error, if any hath been, should
duly corrected, and full and speedy justice done to the parties afo
said in this behalf, do command you, if judgment be therein give
that then under your seal, distinctly and openly, you send t
record and proceedings aforesaid, with all things concerning t
same, to the Supreme Court of the United States, together wi
this writ, so that you have the same in the said Supre
7 Court at Washington, within 30 days from the date here
that the recor-s and proceedings aforesaid being inspected, t
said Supreme Court may cause further to be done therein to corre
that error, what of right, and according to the laws and customs
the United States, should be done.

Witness the Honorable Edward Douglass White, Chief Justi
of the United States, the 24th day of September, in the year of o
Lord one thousand nine hundred and thirteen.

[Seal of the United States District Court, Western District of Oklahoma.]

ARNOLD C. DOLDE,
Clerk of the United States District — for the Western District of Oklahoma.

Allowed, Sept. 23, 1913.
SAMUEL W. HAYES,
Chief Justice Supreme Court of Oklahoma.

Filed Sep. 24, 1913. W. H. L. Campbell, Clerk.

UNITED STATES OF AMERICA,
Western District of Oklahoma, ss:

I, Arnold C. Dolde, clerk of the District Court of the United State
for the Western District of Oklahoma do hereby certify that th
interlineation in this writ of error "as county treasurer et al." wa
interlined by and with consent of Samuel W. Hays, Chief Justic
of the Supreme Court of Oklahoma.

Witness my hand and seal of said court at Guthrie, in said Dis
trict, this 28 day of October 1913.

[Seal of the United States District Court, Western District of Oklahoma.]

ARNOLD C. DOLDE,
Clerk U. S. Dist. Court, Western District of Oklahoma.

8 [Endorsed:] In the Supreme Court of the United States o
America. The Mellon Company, a corporation, plaintiff
vs. Chas. McCafferty, et al. Writ of Error. Douglas B. Crane, At-
torney for Plaintiff.

9 THE MELLON COMPANY, a Corporation, Plaintiff in Error,
vs.
CHAS. MCCAFFERTY, as County Treasurer, et al., Defendants in Error.

Bond.

Know all men by these presents, That we, The Mellon Company, as principal, and The Ætna Accident and Liability Company—as surety, are held and firmly bound unto John W. Riley as county clerk and Chas. Mc-Cafferty as county treasurer, and their successors in office, in the sum of $2,477.44, to be paid to the said parties, to which payment, well and truly to be made, we bind ourselves jointly and severally firmly by these presents.

Sealed with our seal, and dated this nineteenth day of September, 1913.

Whereas, the above named plaintiff in error seeks to prosecute its writ of error to the United States Supreme Court to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Oklahoma.

Now therefore, the condition of this obligation is such, that if the above named plaintiff in error shall prosecute its said writ of error to effect, and answer all costs and damages that may be adjudged, if it shall fail to make good its plea, then this obligation to be void, otherwise to remain in full force and effect.

[SEAL.] W. H. CRANE, *President.*

Attest:

M. D. SCOTT, *Secretary.*

THE ÆTNA ACCIDENT & LIABILITY COMPANY,
By H. V. KAHLE, *Resident Vice-President.*

Attest:

[SEAL.] A. R. MILLSEY,
Resident Ass't Secretary.

Bond approved and to operate as supersedeas.
Dated Sept. 23, 1913.

SAMUEL W. HAYES,
Chief Justice of the Supreme Court of Oklahoma.

Endorsed: #2020. In the Supreme Court of Oklahoma. The Mellon Company a corporation Plaintiff in error, vs. Chas. McCafferty, as County Treasurer, et al., Defendants in error. Bond. Filed Sept. 23, 1913. W. H. L. Campbell, Clerk. Douglas B. Crane, Attorney for Plaintiff.

10 (Filed May 22, 1911. W. H. L. Campbell, Clerk.

In the Supreme Court of the State of Oklahoma.

Case No. —.

THE MELLON COMPANY, a Corporation, Plaintiff in Erro

vs.

CHAS. MCCAFFERTY, as County Treas. of Okla. County, and JOHN Riley, as County Clerk of Oklahoma County, State of Oklaho Defendants in Error.

Petition in Error.

The said, The Mellon Company, plaintiff in error, complains said defendants in error for that the said plaintiff in error did its petition in the District Court of Oklahoma County, State Oklahoma, against said defendants in error to which said petit defendants filed a general demurrer; a certified transcript of record of said court is hereunto attached, marked Exhibit "A" made a part of this petition in error, and the said, The Mellon C pany avers that there is error in the said record and proceedings this, to-wit:

The court erred in sustaining the demurrer to the plaintiff's tition in said cause.

Wherefore the plaintiff in error prays that said judgment so r dered may be reversed, set aside and held for naught, and tha judgment may be rendered in favor of the plaintiff in error a against the defendant- in error sustaining the petition of the pla tiff as filed herein and overruling the demurrer of said defenda in error, and that the plaintiff in error be restored to all rig that it has lost by the rendition of such judgment, and for su other relief as to the court may seem just.

THE MELLON COMPANY,
By DOUGLAS B. CRANE,
Attorney for Plaintiff in Error

11 *Index.*

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12 In the District Court of Oklahoma County, State of Oklahoma.

Case No. 9902.

THE MELLON COMPANY, a Corporation, Plaintiff,
vs.
JOHN W. RILEY, as County Clerk, and CHARLES MCCAFFERTY, as County Treasurer, of Oklahoma County, State of Oklahoma, Defendants.

EXHIBIT "A."

Transcript.

Appearances:

For the plaintiff: Crane & Ready.
For the defendant-: Sam Hooker, County Att'y; A. F. Moss, Assistant.

13 In the District Court of Oklahoma County, State of Oklahoma.

No. 9902.

THE MELLON COMPANY, a Corporation, Plaintiff,
vs.
JOHN W. RILEY, as County Clerk, and CHARLES MCCAFFERTY, as County Treasurer, of Oklahoma County, State of Oklahoma, Defendants.

Be it remembered: That heretofore, and on to-wit: December 22nd, 1910, the plaintiff above named, commenced its action against the above named defendants by filing in the office of the Clerk of the District Court of the Thirteenth Judicial District of Oklahoma County, State of Oklahoma, its certain petition in writing, a true and correct copy of which said petition, together with the endorsements thereon, being in words and figures, as follows, to-wit:

14 In the District Court in and for Oklahoma County, State of Oklahoma.

Case No. 9902.

THE MELLON COMPANY, a Corporation, Plaintiff,
vs.
JOHN W. RILEY, as County Clerk, and CHARLES MCCAFFERTY, as County Treasurer, of Oklahoma County, State of Oklahoma, Defendants.

Petition.

Comes now the plaintiff in the above entitled action. The Mellon Company, and for its cause of action against the defendants herein, John W. Riley, as County Clerk, and Charles McCafferty, as County Treasurer of Oklahoma County, State of Oklahoma, alleges and states:

That this plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Oklahoma, and authorized to do a general merchandise business in said State.

That said defendant John W. Riley is the duly elected, qualified and acting County Clerk of Oklahoma County, State of Oklahoma, and was such County Clerk at all times hereinafter mentioned.

That said defendant Charles McCafferty is the duly elected qualified and acting County Treasurer of Oklahoma County, State of Oklahoma, and was such County Treasurer at all times herein after mentioned.

That one Ezra Offutt was the duly elected, qualified and acting assessor of the City of Oklahoma City for the year 1910, and as such, together with his deputies and assistants, made the assessments in the year 1910, for the purpose of the taxation of all real estate and personal property within the said City of Oklahoma City, said County and State, which said city was and is a city of the first class.

15 That it was understood and agreed by and between the members of the Board of Equalization of the County of Oklahoma and the said Ezra Offutt, together with the sanction of the State Auditor, that the property of said City should be assessed at sixty per centum (60%) of its fair and actual cash value for the purposes of taxation; it being further understood and agreed by and between the said Offutt, and the members of the said Board that all of the township Assessors of said County would make the assessment of all property within said County upon the same basis. That pursuant to said agreement and understanding the said Offutt, as Assessor of the City of Oklahoma, together with his various deputies and assistants, assessed all of the property in the City of Oklahoma upon that basis, save and except the property of this plaintiff, and the property of other corporations in said City. The said Offutt, together with his various deputies and assistants did assess the property of this plaintiff, exclusive of real estate at the sum of One Hun-

ed thirty-two Thousand ($132,000) Dollars, which said assess-
nt was duly returned to the proper taxing officers of said County.
That the assessment of the property of said plaintiff located in
d City, exclusive of real estate owned by it, estimated at a fair
l voluntary cash price or value and estimated at the same propor-
n of its true value as that of all other property owners in said
y, except this plaintiff and kindred corporations and at a value
ich would permit this plaintiff to pay only its just proportion of
taxes is not to exceed the sum of Seventy-nine Thousand Two
ndred ($79,200.00) Dollars.

That pursuant to the direction of the State Auditor, all other prop-
y in said City of Oklahoma, with the exception of other corpora-
ns in said City, was systematically, wilfully and purposely assessed,
under said agreement and understanding at an amount not to
exceed sixty per cent (60%) of its fair and voluntary cash
price or value; that the result of such under-valuation and
der-assessment of property belonging to other tax-payers than this
aintiff and its associated corporations in said City of Oklahoma
ty, is and was intended and in truth and in fact does cause this
aintiff to bear a greater measure and proportion than its just share
taxes of said City, County State and School District and does deny
it the equal protection of the law and does deprive it of its prop-
ty without due process of law as guaranteed to it by the Constitu-
n and laws of the United States, and the laws of the State of Okla-
oma and does result in an un-uniform taxation, contrary to the con-
tution of the State of Oklahoma.

That in making and taking of said assessments of real and per-
nal property located in the City of Oklahoma for the purpose of
xation for the present year, A. D. 1910, said Assessor, together
ith his deputies and assistants did intentionally, wilfully and pur-
sely under-value a large amount of property within said City, to-
it: real estate, stocks of merchandise, cattle, horses and a large
nount of other personal property, and instead of returning same
a valuation which would equal the amount for which it would
ll at a fair voluntary sale for cash, as required by law, the same
as deliberately and intentionally returned for assessment at a valua-
on not to exceed sixty per cent (60%) of the actual fair cash value
ereof. And in many instances property of persons other than this
laintiff and its associate corporations in said City, was assessed at
much lower rate than sixty per cent (60%) of its fair cash value;
hile said plaintiff and its associate corporations within said City of
klahoma City by reason of the unlawful action of the said City
ssessor, his deputies and assistants were assessed at full value, or
One Hundred Cents on the Dollar, as provided by law for the
7 taxes of all property within the State of Oklahoma. That be-
cause of the action of the City Assessor as hereinbefore com-
lained of and by reason — the greatly increased rate of assessment
f said corporations in said City of this plaintiff in particular, this
laintiff has been injured and is injured by said assessment and was
nd is discriminated against in favor of other property owners of
aid City, and hence compelled to bear a much larger portion of taxes

in proportion to its real worth than any other individual tax-payer in said City; that by reason of said unjust discrimination in the manner of making said assessment this plaintiff will be compelled to pay the sum of Twelve Hundred Thirty-eight & 72/100 ($1238.72) Dollars more in taxes for the year 1910, than its just and true proportion of the taxes which might be lawfully and rightfully assessed for the use and benefit of the City of Oklahoma, County of Oklahoma and State of Oklahoma and the School District in which said City is located.

That section five (5) of Article (10) ten, of the constitution of the State of Oklahoma provides:

"Taxes shall be uniform upon the same class of subjects. And that by virtue of the provisions of Section eight (8) of Article Ten (10) of the Constitution of the State of Oklahoma and Section 7547 of the Compiled Laws of the State of Oklahoma for the year 1909 all taxable property, real or personal, shall be listed and assessed each year at its fair cash value, and the provisions are mandatory upon any and all officers who are charged with the duty of listing an assessment of real and personal property for taxation in the State of Oklahoma.

That the defendant herein, the County Clerk of said Oklahoma County, has spread or is about to spread for assessment and taxation against said plaintiff the valuation above mentioned as placed by the said assessor upon the tax-rolls of the said County to be delivered in due time to the County Treasurer of said County; and that the
18 taxation against the said plaintiff which will be spread upon the tax-rolls by said County Clerk as aforesaid, and therefore turned over to the County Treasurer by said County Clerk *in* the sum of Three Thousand One Hundred, Eleven & 80/100 ($3111.80) Dollars, as will be shown by said tax-rolls and based upon such unlawful, wrongful, improper and un-uniform valuation as aforesaid; whereas said taxes of said plaintiff should not exceed the sum of One Thousand Eight Hundred Seventy-three & 08/100 ($1873.08) Dollars provided the assessment of this plaintiff was to be made uniform with the assessment of *their* property within said City.

Notwithstanding the fact that the collection of the whole of said tax is rendered illegal by reason of the unlawful unauthorized and un-uniform assessemnt as aforesaid, this plaintiff is willing that it should bear its just proportion along with the other tax-payers of the said City and hereby avers that it is ready and willing to pay the full sum justly due from it for such taxes in the sum of One Thousand Eight Hundred Seventy-three & 08/100 ($1873.08) Dollars, or any other sum or amount which this court may find to be justly and lawfully due from said plaintiff to said City, County, State and School District for the taxes of the year 1910, as aforesaid; that this plaintiff has no full, adequate or complete remedy at law for the redress of its grievance as herein set forth.

Wherefore this Plaintiff, The Mellon Company, prays that said defendant, John W. Riley, as County Clerk, of Oklahoma County, be enjoined and restrained from spreading upon the tax-rolls the amount of Three Thousand One Hundred Eleven & 80/100

($3111.80) Dollars; as taxes against this plaintiff and that said defendant, as County Clerk be enjoined and restrained from placing upon said tax-rolls for taxation against this plaintiff any sum in excess of One Thousand Eight Hundred Seventy-three & 08/100 ($1873.08) Dollars; that the said defendant, Charles McCafferty, be enjoined and restrained from collecting from this plaintiff as
19 taxes for the year 1910, any sum which may be in excess of One Thousand Eight Hundred Seventy three & 08/100 ($1873.08) Dollars aforesaid, and that this court may hear and determine the amount of taxes which said plaintiff rightfully and lawfully owes for the year 1910, and that said defendant, John W. Riley, as County Clerk be forever restrained and enjoined from in any manner placing a greater amount upon the tax rolls than that found by this court to be the lawful amount of taxes to be paid by this plaintiff for the year 1910, and that said defendant, Charles McCafferty, be perpetually and forever restrained and enjoined from collecting a greater amount than found by this court as aforeasid.

This plaintiff further prays that it may recover its costs herein expended and that it be given such other and further relief as to this court may seem just and equitable, and this plaintiff will forever pray.

CRANE & READY,
Attorneys for Plaintiff.

STATE OF OKLAHOMA,
Oklahoma County, ss:

W. H. Crane, of lawful age being first duly sworn upon his oath deposes and states:

That he is president of the plaintiff corporation herein, that he has read the within and foregoing petition and that the facts and allegations therein contained are true to the best of his knowledge and belief.

W. H. CRANE.

Subscribed and sworn to before me this 20th day of Dec. 1910.
[SEAL.] HAZEL DWYER,
Notary Public.

My commission expires Oct. 29, 1914.

Endorsed: 9902. In the District Court. The Mellon Company, a corporation, Plaintiff vs. John W. Riley, as County Clerk, et al. Defendant. Petition. Filed in District Court Oklahoma County, Oklahoma, Dec. 22, 1910. Hathaway Harper, Clerk. By Anne Hoover, Deputy. Crane & Ready, Attorneys for Plaintiff.

20 And on that same day, to-wit: December 22nd, 1910, there was filed and entered of record in Journal 50, in the District Court of Oklahoma County, Oklahoma, a restraining order, duly signed by the Judge of said Court, a true and correct copy of which, together with all the endorsements thereon, being in words and figures as follows, to-wit:

21 In the District Court in and for Oklahoma County, State of Oklahoma.

Case No. 9902.

THE MELLON COMPANY, a Corporation, Plaintiff,
vs.
JOHN W. RILEY, as County Clerk, and CHARLES MCCAFFERTY, as County Treasurer of Oklahoma County, State of Oklahoma, Defendants.

Restraining Order.

Upon reading the petition of plaintiff filed herein and it appearing to the court that the plaintiff upon the facts set out in said petition is entitled to the relief prayed for.

It is therefore ordered, that pending a hearing upon the application for a temporary injunction the defendant, John W. Riley, his assistants, clerks and deputies and Charles McCafferty, his assistants, clerks and deputies are hereby restrained from spreading upon the tax-rolls the amount of Three Thousand One Hundred Eleven & 80/100 ($3,111.80) Dollars as taxes against this plaintiff; that said defendant, John W. Riley, as County Clerk, is hereby restrained from placing upon said tax-rolls for taxation against this plaintiff any sum in excess of One Thousand Eight Hundred Seventy-three & 08/100 ($1,873.08) Dollars and that the said defendant, Charles McCafferty is hereby restrained from collecting from this plaintiff for the taxes of 1910 any sum of which may be in excess of One Thousand Eight Hundred Seventy-three & 08/100 ($1,873.08) Dollars;

22 And it is further ordered that the 26 day of December, 1910, is hereby set as a time for hearing and determining said petition for injunction at the District Court room in the City of Oklahoma, Oklahoma County, Oklahoma, and that notice thereof be given to said defendant at least two days prior to said hearing.

Witness my hand this 22 day of December, 1910.

GEO. W. CLARK,
Judge of the District Court.

Sheriff's Return.

This is to certify that I received this restraining order on Dec. 22, 1910, and executed the same in my County by delivering in person a true copy of the same to John W. Riley as County Clerk and Charles McCafferty as County Treasurer of Oklahoma County, State of Oklahoma, on Dec. 23, 1910.

H. D. GARRISON, *Sheriff.*
By J. W. RIPPEY, *Deputy Sheriff.*

Endorsed: 9902. In the District Court. The Mellon Company, a corporation, Plaintiff, vs. John W. Riley, County Clerk, et al.,

Defendant. Restraining Order. Filed in District Court, Oklahoma County, Okla. Dec. 22, 1910. Hathaway Harper, Clerk. By Verna De Armond, Deputy. Crane & Ready, Attorneys for Plaintiff.

23 Thereafter, and on to-wit: Dec. 27th, 1911, there was made and entered the following order in open court.

9902.

MELLON COMPANY
vs.
J. W. RILEY et al.

This case coming regularly before the Court on application for an injunction herein, and said application being argued the same is submitted to the Court.

24 Thereafter, and on to-wit the 6th day of January, 1911, there was made and entered the following order in open court.

9902.

MELLON CO.
vs.
J. W. RILEY et al.

This cause coming regularly before the court on application of the plaintiff for a temporary injunction herein, and the court being fully advised, it is ordered that said application be, and the same is hereby sustained, to which ruling the defendant excepts.

25 And on that same day, to-wit: January 6th, 1911, there was filed and entered of record in Journal 50, in the District Court of Oklahoma County, Oklahoma, a Temporary Injunction, duly signed by the Judge of Said Court, a true and correct copy of which, together with all the endorsements thereon, being in words and figures as follows, to-wit:

26 In the District Court in and for Oklahoma County, State of Oklahoma.

Case No. 9902.

THE MELLON COMPANY, a Corporation, Plaintiff,
vs.
JOHN W. RILEY, as County Clerk, and CHARLES MCCAFFERTY, as County Treasurer of Oklahoma County, State of Oklahoma, Defendants.

Temporary Injunction.

This cause coming on to be heard before me, George W. Clark, Judge of said Court upon complainant's application, for temporary

injunction on this 27th day of December, 1910, being one of the regular judicial days of said Court; pursuant to notice given to defendants as shown by the record herein. The plaintiffs appeared by its attorneys, Crane & Ready, and the defendants were represented by Edward E. Reardon, County Attorney, the court having read the petition as filed herein and having heard arguments of counsel and being fully advised in the premises finds that the plaintiff is entitled to a temporary injunction as prayed for in the petition filed herein, restraining said defendants, John W. Riley, as County Clerk, his successor in office, his assistants, Clerks and Deputies, and Charles McCafferty, as County Treasurer, his successor in office, his assistants, clerks and deputies from spreading upon the tax rolls the amount of three Thousand One hundred, Eleven & 80/100 ($3,111.80) dollars as taxes against this plaintiff, and that the said defendant, John W. Riley, as County Clerk, his successor in office, assistants, clerks or deputies be enjoined and restrained
27 from placing upon said tax rolls for taxation against this plaintiff any sum in excess of One Thousand Eight Hundred Seventy-three & 08/100 dollars until the further order of this Court.

It is therefore, Ordered, Adjudged and Decreed, that John W. Riley, as County Clerk, his successor in office his assistants, clerks and deputies be restrained from spreading upon the tax rolls the sum of Three Thousand One Hundred Eleven & 80/100 ($3,111.80) Dollars, as taxes against this plaintiff; that the said defendant, John W. Riley, as County Clerk, his successor in office, his clerks, assistants and deputies be restrained and enjoined from placing upon said tax rolls for taxation against this plaintiff, any sum in excess of Eighteen Hundred Seventy-three & 08/100 ($1,873.08) dollars; said defendant, Charles McCafferty, as County Treasurer, his successor in office, his assistants, clerks and deputies, be enjoined and restrained from collecting from this plaintiff for taxes for the year 1910, any sum which may be in excess of Eighteen Hundred Seventy-three & 08/100 ($1,873.08) Dollars, until a further order of this court, conditioned upon the plaintiff filing with the clerk, an approved bond in the sum of Two Thousand Four Hundred Seventy-seven & 44/100 ($2,477.44) dollars conditioned as required by law with sufficient sureties.

GEO. W. CLARK,
Judge of District Court.

Endorsed: Filed in District Court, Oklahoma County, Okla., Jan. 6, 1911. Hathaway Harper, Clerk, by Anne Hoover, Deputy.

28 And on that same day, to-wit: January 6th, 1911, there was filed in the District Court of Oklahoma County, Oklahoma, an Injunction Bond, duly approved by the Clerk of said court, a true and correct copy of which said bond, together with all the endorsements thereon, being in words and figures as follows, to-wit:

29 In the District Court in and for Oklahoma County, State of Oklahoma.

Case No. 9902.

THE MELLON COMPANY, a Corporation, Plaintiff,
vs.
JOHN W. RILEY, as County Clerk, et al., Defendant-.

Injunction Bond.

Whereas, The said Mellon Company, a corporation, has obtained an order of injunction against John W. Riley, as County Clerk, his successor in office, assistants, clerks and deputies, and Charles McCafferty, as County Treasurer, his successor in office, clerks, deputies and assistants in a civil action pending in said above entitled court, wherein the above entitled parties are plaintiff and defendant as set forth in said title.

Now, therefore, we, The Mellon Company, as principal, and W. H. Crane and M. D. Scott, as sureties hereby undertake in the sum of Two Thousand Four Hundred, Seventy-seven & 44/100 ($2,477.44) Dollars; that the plaintiff shall pay to the said defendant and Oklahoma County any damages they may sustain by reason of the issuing of said Injunction if it should be finally decided that the said injunction ought not to have been granted.

Witness our hands this 6th day of January, 1911.

THE MELLON COMPANY,
By W. H. CRANE, *President.*
W. H. CRANE.
M. D. SCOTT.

Attest:
M. D. SCOTT, [SEAL.]
Secretary.

30 STATE OF OKLAHOMA,
Oklahoma County, ss:

I, W. H. Crane, and M. D. Scott, sureties on the above bond, being first duly sworn depose and state:

That *I* am worth the sum of Four Thousand Nine Hundred Fifty-four & 88/100 ($4,977.44) Dollars over and above all *my* liabilities, debts and exemptions.

W. H. CRANE.
M. D. SCOTT.

Subscribed and sworn to before me this 6th day of Jan. 1911.

_____,
Notary Public.

My commission expires Oct. 29, 1914.

The above undertaking and sureties thereto approved by me this 6th day of January, 1911.

HATHAWAY HARPER,
Clerk of the District Court,
By ANNE HOOVER, *Deputy.*

Endorsed: Court No. 9902. In District Court. The Mellon Company, a corporation, Plaintiff, vs. Jno. W. Riley et al., Defendant-. Injunction Bond. Filed in District Court, Oklahoma County, Okla., Jan. 6, 1911. Hathaway Harper, Clerk, by Anne Hoover, Deputy. Crane & Ready, Attorneys for Plaintiff.

31 Thereafter, and on to-wit: January 18th, 1911, the defendants filed their demurrer to plaintiff's petition, a true and correct copy of which said demurrer, together with all the endorsements thereon, being in words and figures as follows, to-wit:

32 In the District Court in and for Oklahoma County, Oklahoma.

THE MELLON COMPANY, a Corporation, Plaintiff,
vs.
JOHN W. RILEY, as County Clerk, and CHARLES MCCAFFERTY, as County Treasurer of Oklahoma County, State of Oklahoma, Defendants.

Demurrer.

Comes now the defendants and demur to the petition of the plaintiff herein on the ground and for the reason that the said petition fails to state facts sufficient to constitute a cause of action in favor of the plaintiff therein and against the defendants or either of them.

SAM HOOKER,
County Attorney,
By A. F. MOSS.

Endorsed: No. 9902. Demurrer. Filed in District Court of Oklahoma County, Oklahoma, Jan. 18, 1911. R. A. Ratledge, Clerk, by Nina E. Babcock, Dep.

33 Thereafter, and on to-wit: the 27th day of April, there was made and entered the following order in open court:

9902.

MELLON CO.
vs.
J. W. RILEY et al.

This case coming regularly on before the court for hearing on defendant's demurrer to plaintiff's petition. The court being fully advised sustains said demurrer, to which ruling of the court, the

plaintiff is given an exception. Plaintiff is given 20 days to prepare and serve case made; defendants are given 5 days thereafter to suggest amendments; same to be settled and signed within three days thereafter, all as per Journal Entry.

34 In the District Court in and for Oklahoma County, State of Oklahoma.

Case No. —.

THE MELLON COMPANY, a Corporation, Plaintiff,
vs.
CHAS. MCCAFFERTY, as County Treasurer of Okla. County, and JOHN W. RILEY, as Clerk of Okla. County, Defendants.

Journal Entry.

This cause coming on to be heard in its regular order before me, W. R. Taylor, Judge of said court on this 27th day of April, 1911, upon defendant's demurrer to plaintiff's petition, and the plaintiff appearing by its attorney of record, Douglas B. Crane, and the defendants appearing by their attorneys of record, Sam Hooker and A. F. Moss, Assistant County Attorney, and the court having read the petition of plaintiff as filed herein, and the general demurrer of the defendant and having heard the arguments of both counsel for the plaintiff and of the defendants, and having considered the authorities as presented by both counsel for the plaintiff and the defendants, and after being fully advised in the premises finds that said demurrer should be sustained.

It is therefore ordered, adjudged and decreed that the said demurrer be and is hereby sustained, to which ruling of the court the plaintiff is given an exception as requested in open court, and the plaintiff having shown good cause for an extension of time within which to prepare and serve a case made for the purpose of filing same with its petition in error in the Supreme Court of this State.

It is hereby ordered and adjudged that the plaintiff have and be allowed twenty days within which to prepare and serve a case made; that the defendants be allowed five days after the serving of
35 said case made within which to suggest amendments to said case made and that three days after the time has expired within which said defendants are allowed by this order to suggest amendments said case be settled and signed, and,

It is further ordered and adjudged by this Court that the plaintiff file its petition in error and case made with the Clerk of the Supreme Court of this State within twenty-nine days from the date of this order.

W. R. TAYLOR,
Judge of District Court of Okla. County.

Endorsed: No. 9902. In the District Court. The Mellon Co., a corporation, Plaintiff, vs. Chas. McCafferty, as Co. Treas. and John

W. Riley, as Clerk of Okla. Co., Defendants. Journal En
Filed in District Court of Oklahoma County, Oklahoma. May 9
1911. R. A. Ratledge, Clerk, by Nina E. Babcock, Deputy. Cr
& Ready, Attorneys for Plaintiff.

36 STATE OF OKLAHOMA,
Oklahoma County, ss:

I, R. A. Ratledge, Clerk of the District Court of the Thirtee
Judicial District, sitting within and for Oklahoma County, State
Oklahoma, hereby certify that the above and foregoing contai
true, full, correct and complete copies of all the pleadings, motio
orders, and demurrers, had, made and entered in said cause.

In testimony whereof, I have hereunto set my hand and the s
of the District Court this 9th day of May, A. D. 1911.

[SEAL.] R. A. RATLEDGE, *Clerk*
By ADELINE BOTTS, *Deputy*

37 I hereby certify that the foregoing case made contains
full, correct and complete copy and transcript of all proce
ings in said cause and all the record upon which the judgment a
Journal Entry in said cause was made and entered and that sa
is a full, true and correct case made.

DOUGLAS B. CRANE,
Attorney for Plaintiff.

38 STATE OF OKLAHOMA,
Oklahoma County, ss:

I, the duly elected and qualified County Attorney of said Coun
and State hereby accept service of the above and foregoing this 16
day of May, 1911.

SAM HOOKER,
Attorney for Defendant-.

And I hereby waive the suggestion of any amendments there
and consent that the same may be settled and signed by the Jud
who tried said cause without further notice to us as to a true a
correct case made.

Dated this 19 day of May, 1911.

SAM HOOKER,
Attorney for Defendant-.

39 In the District Court in and for Oklahoma County, State of Oklahoma.

Case No. —.

THE MELLON COMPANY, a Corporation, Plaintiff in Error,
vs.
CHAS. MCCAFFERTY, as County Treas. of Oklahoma County, and JOHN W. RILEY, as Clerk of Okla. County, Defendants in Error.

Certificate of Judge.

This is to certify that the foregoing case made and amendments thereto have been duly served in due time and the same duly submitted to me for settlement and signed as required by law by the parties to said cause; that the same as above set forth and as corrected by me is full, true and correct and contains a full, true and correct statement of all the pleadings, orders findings, proceedings and judgments had in said cause and all of the record upon which the judgment and Journal Entry in said cause was made, and I hereby settle, allow, certify and sign the same as full, true and correct and hereby order that the Clerk of the District Court attest the same with the seal of said court, and file same of record.

Witness my hand at Oklahoma City, Oklahoma, this 19 day of May, 1911.

[SEAL.] W. R. TAYLOR, *Judge.*

Attest:
R. A. RATLEDGE, *Clerk,*
By A. L. SIMMONS, *Dep.*

40 In the Supreme Court of Oklahoma.

Case No. —.

THE MELLON COMPANY, a Corporation, Plaintiff in Error,
vs.
CHAS. MCCAFFERTY, as County Treas. of Okla. County, and JOHN W. RILEY, as County Clerk of Okla. County, Defendants in Error.

I, Sam Hooker, duly elected and qualified County Attorney of Oklahoma County, do hereby waive service of summons in the above entitled cause, and enter a general appearance therein.

SAM HOOKER,
County Att'y of Okla. Co.

Filed May 22, 1911. W. H. L. Campbell, Clerk.

Endorsed: #2620. In the Supreme Court. The Mellon Company, a corporation, Plaintiff in error, Plaintiff vs. Chas. McCafferty,

as Co. Treas. of Okla. Co., and John W. Riley as County Clerk o Okla. Co. Defendant in error. Case-Made. Filed May 22, 1911 W. H. L. Campbell, Clerk. Crane & Ready, Attorneys for Plaintiff

41 In the Supreme Court of the State of Oklahoma.

THE MELLON COMPANY, a Corporation, Plaintiff in Error,
vs.
CHARLES MCCAFFERTY, as County Treasurer, and JOHN W. RILEY as County Clerk, Defendants in Error.

Motion.

Comes now the defendants in error and moves the Court for an order authorizing and permitting the defendants in error, to file their brief now in the hands of the Clerk and for grounds hereof state; that the said brief has been prepared as soon as possible because of the pressure of the duties of the office held by Attorneys for defendants in error, and further that this said action has not yet been reached for submission.

SAM HOOKER,
WILLIAM H. ZWICK,
A. F. MOSS,
Attorneys for Defendants in Error.

Notice and service of the foregoing motion is accepted and acknowledged on this 21st day of August, 1911.

DOUGLAS B. CRANE,
Attorney for Plaintiff in Error.

Endorsed: No. 2620. Mellon Co. a corporation P't'ff in Error vs. Riley et al. Def'ts in Error. Motion for extension of time to file briefs. Filed Aug. 22, 1911. W. H. L. Campbell, Clerk.

42 And thereafter to-wit, on the 1st day of September, 1911, in the Supreme Court of Oklahoma, the following proceedings were had in said cause:

Supreme Court, July Term, 1911, September 1st, 1911, Sixth Judicial Day.

No. 2620.

THE MELLON CO., Plaintiff in Error,
vs.
CHAS. MCCAFFERTY, Defendant in Error.

And now on this day it is ordered by the court that the motion of defendant in error for permission to file his brief out of time, be, and the same is hereby allowed.

43 In the Supreme Court of the State of Oklahoma

No. 2620.

THE MELLON COMPANY, a Corporation, Plaintiff in Error,
vs.
CHARLES MCCAFFERTY, County Treasurer, et al., Defendants in Error.

Stipulation and Motion.

It is stipulated and agreed by and between the plaintiff in error and defendants in error in the above entitled cause, that same may be advanced for hearing and consolidated with the cases of:

Rumph, Treasurer, v. Joines, No. 3534;
Williams, County Clerk, v. Garfield Exchange Bank, No. 2957,

and submitted to the court upon the briefs of counsel now on file, and that five copies of the briefs of plaintiff in error on file in the case of Thompson, et al., vs. Brady, et al., 3587, be filed in this case as additional briefs on behalf of defendant- in error. That it is contended that substantially the same legal questions are involved in each of said cases.

The parties hereto move that said cause be advanced, consolidated and submitted in accordance with the terms of this stipulation.

DOUGLAS B. CRANE,
Attorney for Plaintiff in Error;
SAM HOOKER,
County Attorney, Oklahoma County, and
CHARLES WEST,
Attorney General,
By W. C. REEVES,
Ass't Att'y Gen.,
Attorneys for Defendants in Error.

Endorsed: No. 2620. In the Supreme Court of the State of Oklahoma. The Mellon Company, a Corporation, Plaintiff in Error, vs. Charles McCafferty, et al., Defendants in Error. Stipulation and Motion. Filed Mar. 12, 1912. W. H. L. Campbell, Clerk.

44 And thereafter to-wit, on the 26th day of March, 1912, in the Supreme Court of Oklahoma, the following proceedings were had in said cause:

Supreme Court, March Term, 1912, March 26th, 1912, Seventh Judicial Day.

No. 2620.

MELLON Co., Plaintiff in Error,
vs.
CHARLES MCCAFFERTY, Defendant in Error.

And now on this day it is ordered by the court that the stipulation to advance and consolidate with No. 3534 and No. 2957 and submit on briefs now on file, be, and the same is hereby allowed.

45 In the Supreme Court of the State of Oklahoma.

Case No. 2620.

THE MELLON COMPANY, a Corporation, Plaintiff in Error,
vs.
CHARLES MCCAFFERTY, as County Treasurer, et al., Defendants in Error.

Motion.

Comes now the plaintiff in error and moves the court to set aside the submission of the case heretofore made and resubmit it for the June 1913 term.

Plaintiff in error respectfully shows the court that said cause was submitted during May, 1912, and through some oversight has never been passed upon.

Therefore plaintiff in error respectfully requests that the same be resubmitted.

DOUGLAS B. CRANE,
Attorney for Plaintiff in Error.

Service of copy of the within application and motion is acknowledged to have been made on me this 23rd day of May 1913.

CHAS. WEST, *Att'y Gen.*,
By R. E. GISH.

46 In the Supreme Court of the State of Oklahoma.

Case No. 2620.

THE MELLON COMPANY, a Corporation, Plaintiff in Error,
vs.
CHARLES MCCAFFERTY, as County Treasurer, et al., Defendants in Error.

Application.

Comes now plaintiff in error and makes application to the court for permission to file additional briefs in said cause, and that the same may be typewritten.

DOUGLAS B. CRANE,
Attorney for Plaintiff in Error.

Endorsed: Case No. 2620. In the Supreme Court of Oklahoma. The Mellon Company, a Corporation, Plaintiff in error vs. Charles McCafferty, et al. Defendants in error. Motion & Application. Filed May 23, 1913. W. H. L. Campbell, Clerk. Douglas B. Crane, Attorney for Plaintiff.

47 And thereafter to-wit, on the 27th day of May, 1913, in the Supreme Court of Oklahoma, the following proceedings were had in said cause:

Supreme Court, March Term, 1913, May 27th, 1913, Twenty Seventh Judicial Day.

No. 2620.

MELON CO., Plaintiff in Error,
vs.
CHARLES MCCAFFERTY et al., Defendants in Error.

And now on this day it is ordered by the court that the order of submission heretofore entered herein, be, and the same is hereby set aside, and the cause is set for the June 1913 term of court.

48 And thereafter to-wit, on the 10th day of June, 1913, in the Supreme Court of Oklahoma, the following proceedings were had in said cause:

Supreme Court, June Term, 1913, June 10th, 1913, First Judicial Day.

No. 2620.

THE MELLON CO., Plaintiff in Error,
vs.
CHAS. MCCAFFERTY et al., Defendants in Error.

And now on this day it is ordered by the court that plaintiff in error be allowed 15 days within which to file brief, said cause to be submitted as of last day for filing said brief.

49 And thereafter to-wit, on the 30th day of June, 1913, in the Supreme Court of Oklahoma, the following proceedings were had in said cause:

Supreme Court, June Term, 1913, June 30th, 1913, Twelfth Judicial Day.

No. 2620.

MELLON COMPANY, Plaintiff in Error,
vs.
CHAS. MCCAFFERTY, Co. Treas., et al., Defendants in Error.

And now this cause comes on for final decision and determination by the court upon the record and briefs filed herein,

And the court having considered the same finds that the judgment of the trial court in the above cause should be affirmed.

It is therefore ordered and adjudged by the court that the judgment of the trial court in the above cause be, and the same is hereby affirmed. Opinion by Turner, J.

All the Justices concur except Williams and Dunn, JJ., absent and not participating.

50 (Filed June 30, 1913.)

In the Supreme Court of the State of Oklahoma.

No. 2620.

THE MELLON COMPANY, a Corporation, Plaintiff in Error,
vs.
CHAS. MCCAFFERTY, as County Treasurer, et al., Defendants in Error.

Syllabus by the Court.

The syllabus in Ira Williams, as county clerk etc. vs. The Garfield Exchange Bank, —— Okla. ——, is made the syllabus in this case.

Error from the District Court of Oklahoma County.

W. R. Taylor, Judge.

Affirmed.

Douglas B. Crane, Attorney for Plaintiff in Error.
Sam Hooker, Wm. H. Zwick and A. F. Moss, Attorneys for Defendants in Error.

Opinion of the Court.

By TURNER, *J.*:

From a judgment sustaining a demurrer to its petition and dissolving a temporary restraining order the Mellon Company, a corporation, plaintiff in error, plaintiff below, brings the case here and assigns that the court erred in sustaining the demurrer. The petition, which was filed December 22, 1910, in the district court of Oklahoma county, after alleging the corporate existence of plaintiff and John W. Riley to be the duly elected, qualified and acting county clerk of Oklahoma county, Charles McCafferty the county treasurer and Ezra Offutt the duly qualified and acting assessor for the city of Oklahoma City for the year 1910, substantially states that it was understood and agreed by and between the members of the Board of Equalization of Oklahoma county and said Offutt that the property of said city should be assessed at 60% of its fair and actual cash value for the purpose of taxation and that the members
51 of said board and the township assessors throughout said county agreed that they would make the assessment of all property within the county upon the same basis; that pursuant to said agreement said Offutt did assess all the property in the city of Oklahoma city upon the same basis save and except the property of plaintiff and the property of other kindred corporations in said city; that he assessed plaintiff $132,000, whereas if he had assessed plaintiff's property in the same proportion that he assessed that of individuals throughout the city and county the same would have been assessed at $79,200; that all the property in the county was assessed at 60% of its fair cash value and the property of plaintiff and other kindred corporations was assessed its full cash value. The prayer of the petition was that the defendant Riley as county clerk be enjoined from spreading upon the tax rolls the amount of $3,111.80 as taxes against plaintiff; that the county clerk be enjoined from placing upon the tax rolls for taxes against plaintiff any sum in excess of $1873.08 that defendant McCafferty be enjoined from collecting as such any sum in excess of $1,873.08 as taxes for the year 1910 etc. and for general relief.

The question arising upon the demurrer is identical with the point decided in Oklahoma City Mill & Elevator Company v. John W. Riley, as county clerk etc., —— Okla. —— and covered in the syllabus of that case, which reads:

"Whenever the statutes of a state provide a mode by which appeals

may be taken from the assessment or equalization of property, th remedy is exclusive. Equitable remedies cannot be resorted to.

The petition in a suit by a corporation to enjoin the collectio of a portion of its taxes upon the ground that by a pre-arranged pla the taxing officers assessed the property of all corporations at its tru cash value, as required by law, whilst they assessed the property o the same class belonging to individuals at 60 per cent. of its tru cash value which fails to state that the plaintiff made any effort t have the lack of uniformity redressed in the manner provided b sections 7616 and 7617, Comp. Law, Okla. 1909, or facts sufficien to excuse such omission does not state facts sufficient to constitute cause of action."

See also Ira Williams as county clerk Etc. v. Garfield Exchang Bank, Etc., —— Okla. ——. Following these cases the judgment o the trial court is affirmed.

All the Justices concur except Williams and Dunn, JJ., absen and not participating.

52 In the Supreme Court of the State of Oklahoma.

Case No. 2620.

THE MELLON COMPANY, a Corporation, Plaintiff in Error,

vs.

CHAS. McCAFFERTY, as County Treasurer, et al., Defendants in Error.

Petition for Rehearing.

Comes now the Mellon Company, plaintiff in error, and represents that on the 30th day of June, 1913, judgment was rendered in this court affirming the judgment of the District Court of Oklahoma County, sustaining a demurrer to the petition of the plaintiff in error.

(1) That the said decision overlooked the question which alone is decisive in this case; to-wit, that chapter 73 of the laws of 1910 were not in force at the time this cause of action arose; that therefore, Section 5771 of the Statutes of 1909, giving right of injunction for illegal taxation had not yet been repealed and that there were two remedies that might be had, viz., an appearance before the Board of Equalization and by way of injunction under a proper statement of facts.

(2) That said decision is in conflict *to* the 5th and 14th Amendments of the Constitution of the United States, which provide that no state shall make or enforce any law which shall abridge the privileges or immunities of a citizen of the United States, nor shall deprive any person of property without due process of law, nor

53 deny to any person within its jurisdiction, the equal protection of the laws, and is contrary to the fundamental principles of the constitution of the United States as laid down in the decision of Cummings vs. The Bank, 101 U. S. page 153, 25 Law Ed.

903, and Raymond vs. Chicago Union Traction Company, 207 U. S. Page 20, 52 Law Ed. 78.

Wherefore plaintiff in error prays that a rehearing may be had in order that the Supreme Court may consider these questions, which were overlooked in the opinion heretofore rendered.

DOUGLAS B. CRANE,
Attorney for Plaintiff in Error.

Service of the above petition acknowledged to have been made upon this office July 7, 1913.

CHARLES WEST,
Att'y General.
By W. C. REEVES,
Ass't Att'y Gen.

Endorsed: Case No. 2620. In the Supreme Court of Oklahoma. The Mellon Company, a corporation, Plaintiff in Error vs. Chas. McCafferty et al., Defendants in error. Petition for Rehearing. Filed Jul- 3, 1913. W. H. L. Campbell, Clerk. Douglas B. Crane, Att'y for Plaintiff in error.

54 And thereafter to-wit, on the 22nd day of July, 1913, in the Supreme Court of Oklahoma, the following proceedings were had in said cause:

Supreme Court, June Term, 1913, July 22nd, 1913, Sixteenth Judicial Day.

No. 2620.

MELLON COMPANY, Plaintiff in Error,
vs.
CHARLES MCCAFFERTY et al., Defendants in Error.

And now on this day it is ordered by the court that the petition for rehearing filed herein be, and the same is hereby overruled.

55 In the Supreme Court of the State of Oklahoma.

Case No. 2620.

THE MELLON COMPANY, a Corporation, Plaintiff in Error,
vs.
J. W. RILEY et al., *Plaintiff* in Error.

Application for Stay of Mandate.

Comes now, the Plaintiff in error, and makes application to stay the mandate in said cause for the period of sixty days, and for reason, therefore, respectfully shows the court that it intends to prose-

cute an appeal to the Supreme Court of the United States, a
desires this time, in order to perfect such an appeal.

Respectfully requested.

DOUGLAS B. CRANE,
Attorney of Plaintiff in Error.

Application granted this first day of August, 1913.

SAMUEL W. HAYES,
Chief Justice of Supreme Court of Oklahoma.

We agree to stay of mandate for the purpose stated so far as sta
is concerned.

CHAS. WEST,
Attorney General,
By C. J. DAVENPORT,
Ass't Att'y Gen'l.

Endorsed: # 2620. In the Supreme Court of the State of Ok
homa. The Mellon Company, a corporation, Plaintiff in Error, v
J. W. Riley et al., *Plaintiff* in error. Application for stay of Ma
date. Filed Aug. 1, 1913. W. H. L. Campbell, Clerk. Doug
B. Crane, Attorney for Plaintiff in error.

56 And thereafter to-wit, on the 1st day of August, 1913,
the Supreme Court of Oklahoma, the following proceedin
were had in said cause:

Supreme Court Proceedings.

In the Supreme Court of the State of Oklahoma.

No. 2620.

MELLON Co., Plaintiff in Error,
vs.
J. W. RILEY et al., Defendants in Error.

And now on this August 1 1913, it is ordered by Hayes, C.
that the mandate of this court in the above cause be, and the sa
is hereby stayed.

57 In the Supreme Court of the State of Oklahoma.

Certificate.

I, W. H. L. Campbell, Clerk of the Supreme Court of the Sta
of Oklahoma, do hereby certify that the foregoing 56 pages, nu
bered from 1 to 56, both inclusive, are a full, true and comple
transcript of the record and all proceedings in said Court in cau
No. 2620, The Mellon Company, a corporation, Plaintiff in Erro
vs. Chas. McCafferty, as County Treasurer of Oklahoma Count

and John W. Riley as County Clerk of Oklahoma County, State of Oklahoma, Defendants in Error, as the same remains on file and of record in my office.

In Witness Whereof, I hereunto set my hand and affix the seal of said Court, at Oklahoma City, this 6th day of October, 1913.

[Seal Supreme Court, State of Oklahoma.]

W. H. L. CAMPBELL, *Clerk,*
By JESSIE PARDOE, *Deputy.*

Endorsed on cover: File No. 23,926. Oklahoma Supreme Court. Term No. 291. The Mellon Company, plaintiff in error, vs. Charles McCafferty, as County Treasurer, et al. Filed October 31st, 1913. File No. 23,926.

27

FILED
OCT 19
JAMES D.

In the Supreme Court of the United States

October Term 1915

The Mellon Company,
Plaintiff in Error,
vs.
Charles McCafferty, County Treasurer, *et al.*,
Defendants in Error.

No. 27

BRIEF FOR PLAINTIFF IN ERROR

W. A. Lanehester,
R. L. Gittins,
R. R. Bell,
Attorneys for Plaintiff in Error.

Oklahoma Law Brief Company, 110 W. Third St., Oklahoma City

In the Supreme Court of the United States

October Term 1915

The Mellon Company,
Plaintiff in Error,
vs.
Charles McCafferty, County Treasurer, *et al.*,
Defendants in Error.

No. 27

BRIEF FOR PLAINTIFF IN ERROR

[Figures in parentheses refer to pages of printed Record.]

This cause is pending on a writ of error to the Supreme Court of Oklahoma to review a decision holding that a petition in a suit by a corporation to enjoin the collection of a part of its taxes on ground that by a pre-arranged plan the taxing officers assessed the property of all corporations at its true cash value whilst they assessed property of the same class belonging to individuals at sixty

per cent of its true cash value, which fails to state that the plaintiff made any effort to have the lack of uniformity redressed in manner provided by Section 7616 and Section 7617, Compiled Laws of Oklahoma 1909, or facts sufficient to excuse such omission, does not state facts sufficient to constitute a cause of action (26).

Section Section 7616 reads:

> "The township assessor, the township clerk and the township treasurer, shall compose the board of equalization for each township; the town or city assessor, mayor or president of the board of trustees, and city clerk shall compose the board of equalization for cities towns and villages, and said board shall meet on the third Monday of April of said year to examine the assessment rolls of such township, cities or towns, and to hear all complaints of persons who shall feel aggrieved by their assessment, and to correct, equalize and adjust the assessments therein by increasing or decreasing individual assessments or the aggregate assessments of such city, town, village or township, and if necessary they may require a reassessment of any or all the property therein, such correction, equalization, adjustment or reassessment, shall be for the purpose of causing the same to be assessed at its fair cash value as herein defined and decision of said board shall be final as to individual assessment unless an appeal is taken to the board of county commissioners on or before the first Monday in June next following. The decision of the board of county commissioners shall be final in all cases."

Said Section 7617 reads:

> "The board of county commissioners of each county or a majority thereof shall constitute the board of equalization for the county and shall hold a session commencing on the first Monday in June of each year for the purpose of equalizing, correcting and adjusting the assessment rolls in their county between the different townships by increasing or decreasing the aggregate assessed value of the property or any class thereof, in any or all of them, to conform to the fair cash value thereof as herein defined: Provided, that the county board of equalization may for the purpose of having the assessment of any city, town, village or township corrected, order a reassessment of any or all of the property therein."

On December 22nd, 1910, plaintiff in error filed in District Court of Oklahoma County, Oklahoma, its said petition alleging the making of said pre-arranged plan of assessment, to the making of which pre-arranged plan the members of the board of equalization of said Oklahoma County were parties; that in accordance with said pre-arranged plan property of plaintiff in error was assessed at One Hundred Thirty-two Thousand Dollars, whereas if it had been assessed in same proportion that property of individuals was assessed it would have been assessed at Seventy-nine Thousand Two Hundred Dollars, and that said assessment denied to plaintiff in error the equal

per cent of its true cash value, which fails to state that the plaintiff made any effort to have the lack of uniformity redressed in manner provided by Section 7616 and Section 7617, Compiled Laws of Oklahoma 1909, or facts sufficient to excuse such omission, does not state facts sufficient to constitute a cause of action (26).

Section Section 7616 reads:

"The township assessor, the township clerk and the township treasurer, shall compose the board of equalization for each township; the town or city assessor, mayor or president of the board of trustees, and city clerk shall compose the board of equalization for cities towns and villages, and said board shall meet on the third Monday of April of said year to examine the assessment rolls of such township, cities or towns, and to hear all complaints of persons who shall feel aggrieved by their assessment, and to correct, equalize and adjust the assessments therein by increasing or decreasing individual assessments or the aggregate assessments of such city, town, village or township, and if necessary they may require a reassessment of any or all the property therein, such correction, equalization, adjustment or reassessment, shall be for the purpose of causing the same to be assessed at its fair cash value as herein defined and decision of said board shall be final as to individual assessment unless an appeal is taken to the board of county commissioners on or before the first Monday in June next following. The decision of the board of county commissioners shall be final in all cases."

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On December 22nd, 1910, plaintiff in error filed in District Court of Oklahoma County, Oklahoma, its said petition alleging the making of said pre-arranged plan of assessment, to the making of which pre-arranged plan the members of the board of equalization of said Oklahoma County were parties; that in accordance with said pre-arranged plan property of plaintiff in error was assessed at One Hundred Thirty-two Thousand Dollars, whereas if it had been assessed in same proportion that property of individuals was assessed it would have been assessed at Seventy-nine Thousand Two Hundred Dollars, and that said assessment denied to plaintiff in error the equal

protection of the law, and deprived it of its property without due process of law as guaranteed by the constitution and laws of the United States (8 to 11).

Demurrer to said petition on ground that it did not state facts sufficient to constitute a cause of action (16) was sustained by said district court on April 27, 1911 (17). Action of said district court in sustaining said demurrer was affirmed in said decision of said Supreme Court (25-26).

In case of *Ira Williams as County Clerk* v. *Garfield Exchange Bank*, referred to in said decision of said Supreme Court (26) and reported in 38 Okl. 539, 134 Pac. 863, reference is made to Chapter 87, Session Laws of Oklahoma of 1910, pages 173 and 174, providing for appeals from county boards of equalization to county court of county where the assessment is made within thirty days after adjournment of said boards; that proceedings before the board of equalization, and appeals therefrom, shall be the sole method by which assessments or equalizations should be corrected or taxes abated, and that equitable remedies should be resorted to only where the aggrieved party has no taxable property within the tax district of which complaint is made.

Said Chapter 87 was approved on March 24th, 1910; did not contain emergency clause, and, therefore, in accordance with provisions of Section 58 of Article 5 of Constitution of Oklahoma did not become effective until ninety days after adjournment of session at which it was passed. Said session adjourned on 19th day of March, 1910, therefore said chapter did not become effective until June 17th, 1910.

First section of Chapter 73 of Session Laws of 1910, pages 148 and 149, approved on March 19th, 1910, also provided for an appeal from decision of county board of equalization to county court. Said Chapter 73 likewise did not contain the emergency clause, and under said section of the Oklahoma Constitution did not become effective until June 17th, 1910.

Section 5771 of said Compiled Laws of 1909 contains following provision:

> "An injunction may be granted to enjoin the illegal levy of any tax, charge or assessment or the collection of any illegal tax, charge or assessment, or any proceeding to enforce the same."

Said Section 5771 was adopted from Kansas by legislature of Territory of Oklahoma in 1893, and is now Section 4881 of Revised Laws of 1910

of Oklahoma, which went into effect on 16th day of May, 1913.

The questions here involved are:

FIRST: Whether or not the decision of the Supreme Court of Oklahoma takes the property of plaintiff in error without due process of law, contrary to the provisions of the Fifth Amendment to the Constitution of United States.

SECOND: Whether or not said decision is in conflict with the Fourteenth Amendment to the Constitution of the United States as enforcing a law which abridges the privileges and immunities of a citizen of the United States and deprives a person of property without due process of law and denies to said person the equal protection of the laws as provided in the Fourteenth Amendment to the Constitution of United States.

THIRD: Whether or not plaintiff in error under said provision of said Section 5771 was authorized to seek equitable relief without being required to comply with the provisions of said Sections 7616 and 7617.

ASSIGNMENTS OF ERROR

The Supreme Court of Oklahoma erred in holding and deciding:

FIRST: That said decision, holding that said Chapter 73 was in force, takes property without due process of law, contrary to the Fifth Amendment of the Constitution of the United States.

SECOND: That said judgment is in conflict with the Fourteenth Amendment of the Constitution of the United States, as it enforces a law which abridges the privileges and immunities of a citzen of the United States and deprives a person of property without due process of law, and denies to said person within its jurisdiction the equal protection of the laws.

POINTS AND AUTHORITIES

I.

The decision of the Supreme Court of Oklahoma is contrary to and violates the provisions of the Fifth and Fourteenth Amendments to the Constitution of the United States.

Raymond v. *Chicago Union Traction Co.*, 207 U. S. 20, 52 L. Ed. 78.

Cummings v. *Merchants National Bank of Toledo*, 101 U. S. 153, 25 L. Ed. 903.

II.

Under the facts alleged in its petition plaintiff in error was entitled to equitable relief.

Section 5771, Compiled Laws of Oklahoma 1909.

Bardrick v. *Dillon*, 7 Okl. 535, 54 Pac. 785.

Article X, Section 5, Oklahoma Constitution.

Raymond v. *Chicago Union Traction Co.*, 207 U. S. 20, 52 L. Ed. 78.

Wilcox v. *Consolidated Gas Company*, 212 U. S. 19, 53 L. Ed. 382.

General Oil Company v. *Crain*, 209 U. S. 211, 52 L. Ed. 754.

Chicot v. *Sherwood*, 148 U. S. 529, 37 L. Ed. 546.

Love v. *A., T. & S. F. Ry. Co.*, 185 Fed. 321.

A., T. & S. F. Ry. Co. v. *Love*, 174 Fed. 59.

ARGUMENT.

I.

The decision of the Supreme Court of Oklahoma is contrary to and violates the provisions of the Fifth and Fourteenth Amendments to the Constitution of the United States.

> *Raymond* v. *Chicago Union Traction Co.*, 207 U. S. 20, 50 L. Ed. 78.
> *Cummings* v. *Merchants National Bank of Toledo*, 101 U. S. 153, 25 L. Ed. 903.

The demurrer to the petition of plaintiff in error admitted the truth of the allegations therein contained. Said allegations showed the assessment of the property of the plaintiff in error and other kindred corporations for taxation at a much higher rate than was assessed similar property of individuals, resulting in great disparity and discrimination, and the denials of the due process of law and equal protection of the laws provided for in the Fourteenth Amendment to the United States Constitution. The following portion of the opinion of this Honorable Court in *Raymond* v. *Chicago Union Traction Company:*

> "A system of valuation was adopted and applied to a large class of corporations, differing wholly from that applied to other corporations of the same class, and resulting in a

> discrimination against the appellee of the most serious and material nature. It is not a question of mere difference of opinion as to the valuation of property, but it is a question of difference of method in the manner of assessing property of the same kind,"

is decisive here. In the instant case one system of valuation was adopted for property of corporations and another system was adopted for valuation of same kind of property of individuals.

II.

Under the facts alleged in its petition plaintiff in error was entitled to equitable relief.

Section 5771, Compiled Laws of Oklahoma 1909.

Bardrick v. *Dillon,* 7 Okl. 535, 54 Pac. 785.

Article X, Section 5, Oklahoma Constitution.

Raymond v. *Chicago Union Traction Co.,* 207 U. S. 20, 52 L. Ed. 78.

Wilcox v. *Consolidated Gas Company,* 212 U. S. 19, 53 L. Ed. 382.

General Oil Company v. *Crain,* 209 U. S. 211, 52 L. Ed. 754.

Chicot v. *Sherwood,* 148 U. S. 529, 37 L. Ed. 546.

Love v. *A., T. & S. F. Ry. Co.,* 185 Fed. 321.

A., T. & S. F. Ry. Co. v. *Love,* 174 Fed. 59.

In *Bardrick* v. *Dillon, supra,* the Territorial Supreme Court of Oklahoma in construing Section 4143 of the Statutes of Oklahoma of 1893, afterwards Section 5771 of Compiled Laws of Oklahoma 1909, and now Section 4841 of the Revised Laws of 1910, says:

> "The rule is sustained by a great preponderance of authority that the collection of taxes and assessments will not be enjoined, unless some special reason is shown for equitable interference. Note to *Holland* v. *Mayer, etc.*, 69 Am. Dec. 199, and cases there cited. But in this territory we have a statute which enlarges the jurisdiction of courts of equity in cases involving the assessment, levying and collection of taxes. Section 4143, St. Okl. 1893, provides: 'An injunction may be granted to enjoin the illegal levy of any tax, charge or assessment, or the collection of any illegal tax charge or assessment, or any proceeding to enforce the same, and any number of persons, whose property is affected by a tax or assessment so levied, may unite in the petition filed to obtain such injunction.' This section of our statute is embraced in the Civil Code, which was adopted from the State of Kansas. In the case of *Commissioners* v. *Lang*, 8 Kan. 284, the Supreme Court of that state held that this statute gave a new remedy, and said: 'Whatever doubt previously existed about the process of injunction as a remedy to prevent the collection of an illegal tax is removed by this section.' There can be no doubt but this statute enlarges the remedy by injunction in tax cases, and clearly gives the complaining party a right to injunction in every case when

the tax or assessment is illegal. The seeming conflict in the authorities involving questions under this statute arises out of the difficulty in determining what is meant by an illegal tax or assessment. It has been frequently held by the courts of highest resort in Kansas that the collection of taxes cannot be enjoined on account of any more irregularity in the proceedings, nor because of any failure of an officer to perform the duties assigned to him within the time specified by statute. *Bank* v. *Ferris* (Kan. Sup.), 39 Pac. 1042, and cases cited. But in any case where the assessing officers or boards have, in the exercise of the taxing powers, acted without authority, or in excess of the powers given them by statute, the tax levied as a result of such unauthorized or excessive acts will be illegal to the extent that such tax is the result of such unauthorized action. And where the assessment or tax is illegal in toto, injunction is a proper remedy for relief; and, in case the tax is invalid in part, the excess will be enjoined where the complaining party has paid or tendered that portion for which his property is legally liable. *Griffith* v. *Watson*, 19 Kan. 23; *City of Ottawa* v. *Barney*, 10 Kan. 270; *Wilson* v. *Longendyke*, 32 Kan. 270, 4 Pac. 361; *Adams* v. *Beman*, 10 Kan. 37; *Dutton* v. *Bank* (Kan. Sup.), 36 Pac. 719; *Stiles* v. *City of Guthrie*, 3 Okl. 26, 41 Pac. 383; *Railway Co.* v. *Wiggins* (Okl.), 49 Pac. 1019."

In its petition plaintiff in error averred its readiness and willingness to bear its just proportion of taxes along with the other taxpayers and to pay the sum the court might find to be justly

and lawfully due from plaintiff in error for taxes of 1910 (10).

Article X, Section 5, of the Constitution of Oklahoma provides:

> "Taxes shall be uniform upon the same class of subjects."

By the method set out in petition of plaintiff in error this provision of this section was nullified.

It would have been an idle ceremony for plaintiff in error to have made an appeal to the county board of equalization which had entered into the illegal agreement complained of.

In its decision the Supreme Court of Oklahoma overlooked the decisive holding in *Raymond* v. *Chicago Union Traction Company, supra.*

No requirement that property shall be assessed at its true cash value prevents the taxpayer, who is discriminated against and whose property is assessed at its full value, from claiming his rights under the Fourteenth Amendment to the Constitution of the United States.

We respectfully ask that the judgment of the Supreme Court of Oklahoma be reversed.

W. A. LEDBETTER,
H. L. STUART,
R. R. BELL,
Attorneys for Plaintiff in Error.

Office Supreme Court
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In the Supreme Court of the United States

October term 1915

The Mellon Company,
Plaintiff in Error,

vs.

Charles McCafferty, County Treasurer et al.,
Defendants in Error.

No. 27

REPLY BRIEF FOR PLAINTIFFS IN ERROR

W. A. Ledbetter,
H. L. Stuart,
R. R. Bell,
Attorneys for Plaintiff in Error.

Oklahoma Law Brief Company, 122 W. Third St., Oklahoma City.

In the Supreme Court of the United States

October term 1915

The Mellon Company,
Plaintiff in Error,

vs.

Charles McCafferty, County Treasurer et al.,
Defendants in Error.

No. 27

REPLY BRIEF FOR PLAINTIFFS IN ERROR

I.

In response to subdivisions one, two and three, under "Points and Authorities" in brief of defendants in error:

As shown on pages 8 and 9 of brief of defendants in error, Chapter 38, Article 2, Section 1

of the Session Laws of Oklahoma of 1909, provided for the assessment of property as soon as practicable on or after the first Monday in March of each year. The first Monday in March, 1910, was the 7th day of that month. Therefore, under the presumption that officers are presumed to do their duty, the work of assessment began promptly as provided in said Chapter 38, Article 2, Section 1, and the pre-arranged plan complained of by plaintiff in error, according to said presumption and the provisions of said section, was made prior to March 7th, 1910. On said date, neither Chapter 73 nor Chapter 87 of the Session Laws of 1910 had received the executive approval. As shown on page five of our original brief said Chapter 73 was approved on March 19th, 1910, and said Chapter 87 was approved on March 24th, 1910, and according to the provision of Section 58, Article 5 of the Constitution of Oklahoma, reading,

> "No act shall take effect until ninety days after the adjournment of the session at which it was passed, except enactments for carrying into effect provisions relating to the initiative and referendum, or a general appropriation bill, unless, in case of emergency, to be expressed in the act, the Legislature, by a vote of two-thirds of all members elected to each House, so directs"

neither took effect until ninety days after adjourn-

ment of the Legislature, which occurred on March 24th, 1910.

Up to the time said Chapters 73 and 87 became effective under the provisions of Section 7616 of the Compiled Laws of 1909, set out on page two of our original brief, plaintiff in error, if it desired to appeal to the board of county commissioners, had to do so on or before the first Monday in June, 1910, and the decision of said board of county commissioners was final in all cases. Of what avail would it have been then for plaintiff in error to appeal to a tribunal that had already decided its cause against it?

Under the provisions of Section 7617, Compiled Laws of 1909, the sessions of the county board of equalization (*i. e.*, the board of county commissioners or a majority thereof) should hold a session commencing on the first Monday in June for the purpose of correcting, equalizing and adjusting the assessment rolls.

Section 7618 of the Compiled Laws of Oklahoma 1909 reads:

> "The county clerk shall be clerk of the board of equalization for the county."

Section 7619 of the said Compiled Laws of 1909 contains the following provision:

> "As soon as practicable after the assessment rolls are equalized, corrected and adjusted as provided for in the preceding section of this article, and before the third Monday in June next ensuing, the county clerk shall make out an abstract thereof containing the total amount of property listed under the various heads or classes appearing on the blank forms for the listing and assessments of property and the total value thereof, which abstract the clerk is directed to transmit without delay to the state auditor, and the county commissioners are authorized to direct the clerk to add to the above list of items as they deem advisable."

Under said Section 7619, therefore, the county clerk was required to make out his abstract before the third Monday in June, 1910, which was June 20th, 1910.

The petition of plaintiff in error, as shown on page 10 of printed record, contained the allegation that it had no full, adequate or complete remedy at law for the redress of its grievance.

As against a general demurrer would not the presumption obtain that the county board of equalization had adjourned prior to the time that said Chapters 73 and 87 of the Revised Laws of 1910 became effective?

The right of appeal from the decision of the county board of equalization to the county court is purely statutory, and did not exist unless the statute providing for the same was in force at at the time the board of county commissioners finished their work as a board of equalization in 1910.

In *Herring* v. *Wiggins,* 7 Okl. 312, 54 Pac. 483, the third section of the syllabus (which was prepared by the court) reads:

> "The right to an appeal from an order of the judge modifying a temporary injunction only exists by virtue of statute, and is in derogation of long-established rules of practice, and must be strictly construed."

The holding in this syllabus was approved and followed by the Supreme Court of Oklahoma in *School District* v. *Eakin,* 23 Okl. 321, 100 Pac. 528.

We here refer to the following from the opinion of this Honorable Court in case of *German National Bank* v. *Kimball,* 103 U. S. 732, cited in brief of defendants in error:

> "In the recent case of *People* v. *Weaver,* 100 U. S. 539 (XXV. 705), and *Pelton* v. *Bk.,* 101 U. S. 143 (XXV. 901), and *Cummings* v. *Bk.,* 101 U. S. 153 (XXV. 903), an apparent exception to the universality of the rule is admitted. It is held in these cases that when the

> inequality of valuation is the result of a statute of the state designed to discriminate injuriously against any class of persons or species of property, a court of equity will give appropriate relief; and also where, though the law itself is unobjectionable, the officers who are appointed to make assessments combine together and establish a rule or principle of valuation, the necessary result of which is to tax one species of property higher than others, and higher than the average rate, the court will also give relief."

II.

In response to subdivision four of "Points and Authorities" in brief of defendant in error:

When the instant case was instituted the tax rolls had not been completed by the county clerk, and the taxes were not then ready for collection under laws of Oklahoma. In its petition plaintiff in error offered to pay eighteen hundred seventy-three dollars, eight cents (which it alleged its taxes fairly assessed would not exceed) or any other sum the court might find to be justly and lawfully due.

Section 7603 and Section 7604 of the Compiled Laws of Oklahoma of 1909 read as follows:

> "The tax roll shall be made up as required by and in the form prescribed by the state examiner and inspector. Provided, that the

county clerk shall transfer to the tax roll for that year in a separate column all delinquent taxes remaining unpaid for the previous years, and when giving a statement of taxes upon any property, said statement shall embrace all taxes due and shall designate the sum due for the current year and the sum past due and delinquent."

"That the county treasurer of each county upon receipt of said tax rolls, shall proceed to, and with the collection of the taxes as therein extended, issuing in triplicate receipts upon all collections, delivering the original to the taxpayer and filing triplicate with the county clerk; Provided, that said receipts shall be in manner and form the same as the tax rolls and shall have printed on them the several items of levy, by and upon which tax is authorized and collected, and shall have endorsed thereon in red ink the amount of delinquent taxes levied against the property."

The cases cited by defendants in error under said subdivision four are, therefore, not applicable to the facts of this case.

Respectfully submitted,

W. A. LEDBETTER,
H. L. STUART,
R. R. BELL,
Attorneys for Plaintiff in Error.

In the Supreme Court of the United States

October Term, 1918

No. 27

POINTS AND AUTHORITIES AND BRIEF FOR DEFENDANTS IN ERROR

Oscar A. Kaufman,

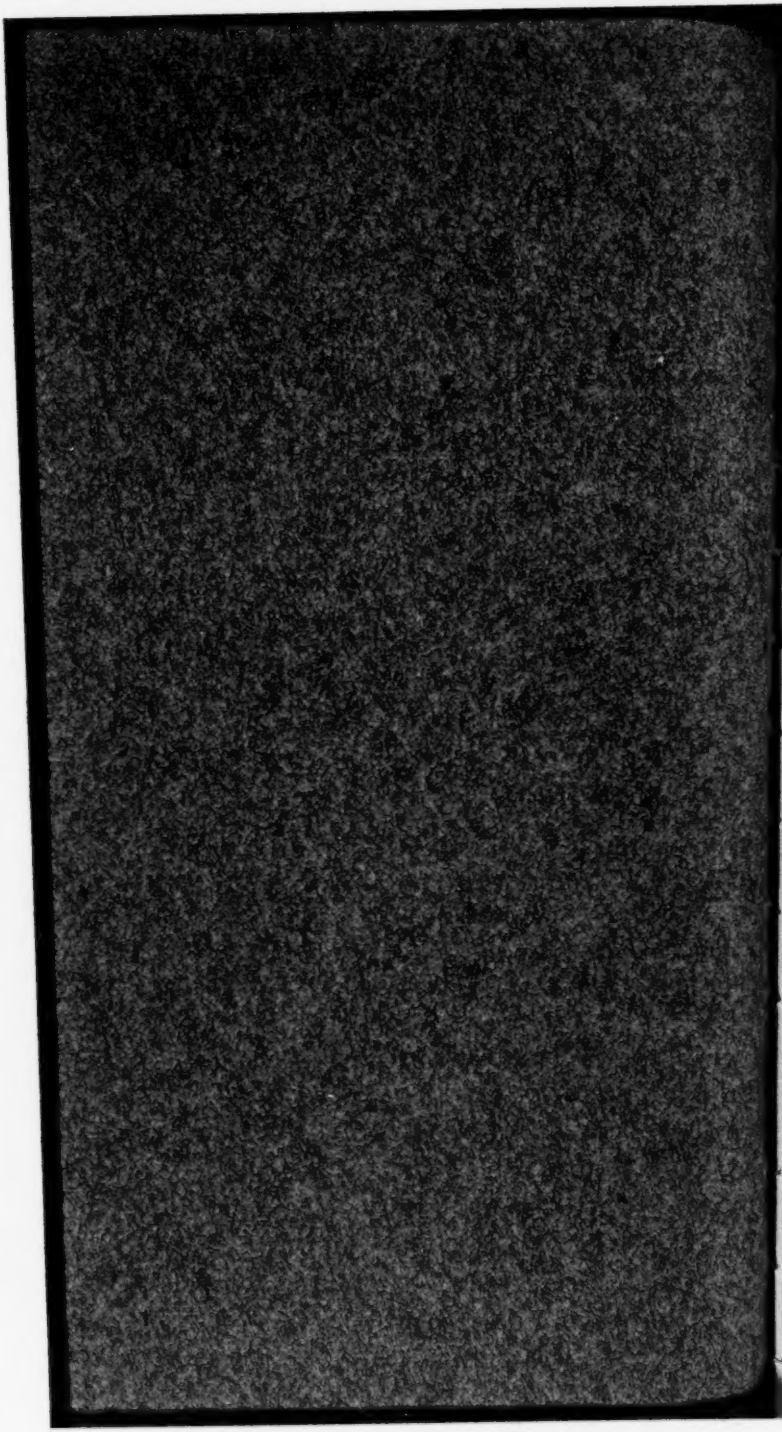
John Barry,

County Attorney, Oklahoma County, State of Oklahoma,

Alex Hoopes,

Assistant County Attorney,

Oklahoma County Courthouse, Oklahoma City, Okla.



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In the Supreme Court of the United States

October Term 1915

The Mellon Company,
Plaintiff in Error,
vs.
Charles McCafferty, County Treasurer, *et al.*,
Defendants in Error.

No. 27

POINTS AND AUTHORITIES AND BRIEF FOR DEFENDANTS IN ERROR

POINTS AND AUTHORITIES

1. Chapter 87, Session Laws of 1910, effective July 17, 1910, gave to plaintiff in error ample opportunity to have all classes of property in Oklahoma County equalized as to value for taxation, as State Board of Equalization convened after the act became a law, and possessed the

power and authority to equalize the valuations of all classes of property in the county for taxation purposes.

Sec. 7620, Snyder's Statutes of Oklahoma.
Chapter 87, Session Laws of 1910; now Sec. — of Revised Laws of Oklahoma.
Williams v. *The Bank*, 38 Okl. 539.
Londan v. *Day*, 38 Okl. 428.
M. C. R. R. Co. v. *Powers*, 50 U. S. L. Ed. 744.
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Security T. & S. V. Co. v. *Lexington*, 51 U. S. L. Ed. 204.
L. & N. Co. v. *Bates*, 22 Fed. 480.
Western Co. v. *Nolan*, 48 N. Y. 513.
West v. *Ballard*, 32 Wis. 168.

2. Having the opportunity to appeal from the State Board to the Supreme Court, the plaintiff in error was not deprived of due process of law, and failing so to do an injunction should be denied.

Voight v. *Detroit*, 46 U. S. L. Ed. 459.
Gallup v. *Schmidt*, 46 U. S. L. Ed. 207.
Simon v. *Craft*, 45 U. S. L. Ed. 1165.
Chambers v. *B. & O.*, 52 U. S. L. Ed. 143.
Walker v. *Ganvinet*, 23 L. Ed. U. S. 678.
Davidson v. *New Orleans*, 24 U. S. L. Ed. 616.
Spencer v. *Merchant*, 31 U. S. L. Ed. 763.

3. The Kansas authorities and the cases from the Supreme Court of Oklahoma Territory cited by plaintiff in error have no application here, for under the Kansas Constitution and the Organic Act of Oklahoma Territory, judicial power is vested alone in courts, while Article 7, Section 1, of the Oklahoma Constitution vests judicial functions in such boards and commissions as the legislative department of the state may see proper, and the subsequent creation of the boards of equalization and providing for an appeal therefrom to the courts clothes these boards with judicial powers to assess property and equalize values, and the judgments of said board are not subject to collateral attack but must be appealed from as provided by statute.

Constitution of Oklahoma, Art. 7, Sec. 1.
Cooley on Taxation (3rd Ed.), Vol. 2, page —.
Hopper v. *Okla. Co.*, 143 Pac. 4.
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Stanley v. *County*, 30 U. S. L. Ed. 1000.
121 U.S. 535

4. The tender of the taxes admittedly due by the plaintiff in error is insufficient (see petition, page 10).

C., B. & Q. R. R. Co. v. *Com'rs*, 67 Fed. 413.

State-R. R. Tax Case, 92 U. S. 575, 616, 617.

Bank v. *Kimball*, 103 U. S. 732.

ARGUMENT OF DEFENDANTS IN ERROR

The plaintiff in error alleges and states in its petition filed in the District Court of Oklahoma County, Oklahoma, that in the year 1910 it owned property subject to taxation, in Oklahoma County, State of Oklahoma, and that its property had been placed upon the tax rolls of said county in the sum of $132,000.00, which represented its true cash value; but that the then assessor of Oklahoma County, who made the assessment for the year 1910, and the Board of Commissioners of Oklahoma County, had agreed to, and did, assess certain classes of property at sixty per cent. of its cash value, but assessed the property of the plaintiff, and other kindred corporations, the full value, and that by reason thereof the plaintiff, and others similarly situated to it were discriminated against and made to bear a greater proportion of the burdens of taxation than other property interests in said county, and, therefore, it had been denied the equal protection of the law, and deprived of its property without due process of law, in violation of the Constitution of the United States, and in violation of the laws and Constitution of the State of Oklahoma.

The plaintiff in error in its brief asserts three propositions:

(1) That the decisions of the Supreme Court of the State of Oklahoma in the case of *Ira Williams, as County Clerk,* v. *The Garfield Exchange Bank,* reported in 38 Okl. 539, which held that Chapter 87 of the Session Laws of the State of Oklahoma of 1910, was in force in ample time to afford to plaintiff in error a remedy for its grievance, was contrary to the provisions of the Fifth Amendment of the Constitution of the United States; (2) that the decision of the Supreme Court of the United States in said case was in violation of the Fourteenth Amendment to the Constitution of the United States, and deprived plaintiff in error of its property without due process of law; (3) that plaintiff in error was, and is, entitled to equitable relief without complying with the statutory remedy or right of appeal, as provided by laws then in force, the same being now Sections 7616 and 7617 of the Revised Laws of the State of Oklahoma.

To present these questions intelligently, we deem it proper to refer to the laws of the State of Oklahoma, under which the assessments involved in this case were made. The Constitution of the State of Oklahoma, Article 10, Section 5, is as follows:

"The power of taxation shall never be sur-

rendered, suspended or contracted away. Taxes shall be uniform upon the same class of subjects."

The Constitution of the State of Oklahoma, Article 10, Section 8, is as follows:

"All property which may be taxed ad valorem shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale; and any officer, or other person authorized to assess values, or subjects for taxation, who shall commit any wilful error in the performance of his duty, shall be deemed guilty of malfeasance, and upon conviction thereof shall forfeit his office, and be otherwise punished as may be provided by law."

Section 21 of the same article is as follows:

"There shall be a State Board of Equalization, consisting of the Governor, State Auditor, State Treasurer, Secretary of State, Attorney General, State Inspector and Examiner and President of the Board of Agriculture. The duty of said board shall be to adjust and equalize the valuation of real and personal property of the several counties of the state, and it shall perform such other duties as may be prescribed by law, and they shall assess all railroad and public service corporations."

Section 22, of the same article, is as follows:

"Nothing in this constitution shall be held, or construed, to prevent the classification of property for purposes of taxation; and the valuation of different classes by different means or methods."

Article 7, Section 1, of the Constitution of Oklahoma, is as follows:

> "The judicial power of this state shall be vested in the senate, sitting as a court of impeachment, a supreme court, district courts, county courts, courts of justices of the peace, municipal courts, and such other courts, commissions or boards, inferior to the supreme court, as may be established by law."

It will be seen that under the constitutional provisions above cited, the judicial power of this state is not vested in courts alone, but permission is expressly given to the legislative department to vest in boards and commissions judicial powers, subject, however, to the limitation that all courts, boards or commissions created by the legislature after the adoption of the Constitution shall be inferior to the Supreme Court.

In 1909 the legislature of the State of Oklahoma enacted Chapter 38, Article 1, Section 1, as follows:

> "All property in this state, whether real or personal, including the property of corporations, banks and bankers, except such as is exempt, shall be subject to taxation."

And at the same time it enacted Chapter 38, Article 2, Section 1:

> "All taxable property, real or personal, shall be listed and assessed each year at its fair cash value, estimated at the price it would

bring at a fair voluntary sale, in the name of the owner thereof, on the first day of March each year, as soon as practicable on or after the first Monday in March, including all owned on the first day of March of that year, and in case of stock of goods, wares and merchandise, the statement shall include the average amount of the same for the preceding year ending March first."

And it also enacted Section 12 of the same chapter and article, as follows:

"All corporations organized, existing or doing business in this state, for profit, other than public service corporations assessed by the State Board of Equalization, including national banks, state banks, and trust companies, shall be assessed upon the net value of their monied capital, surplus, undivided profits as the same existed on the first day of March of each year in the county, town, district, village or city where such corporation is located, less the assessed valuation of any real estate located in this state owned by such corporation and listed separately in the name of such corporations. 'Monied capital' as used in this section shall include money actually invested in the business of such corporation whether represented by certificates of stock, debentures or bonds."

It also enacted Chapter 38, Article 6, Section 1:

"The township assessor, the township clerk and the township treasurer shall compose the board of equalization for each township; the town or city assessor, mayor or president of the board of trustees, and city clerk shall com-

pose the board of equalization for cities, towns and villages, and said board shall meet on the third Monday in April of said year to examine the assessment rolls of such township, cities or towns, and to hear all complaints of persons who shall feel aggrieved by their assessment, and to correct, equalize and adjust the assessments therein by increasing or decreasing individual assessments or the aggregate assessments of such city, town, village or township, and if necessary they may require a re-assessment of any or all of the property therein; such correction, equalization, adjustment or re-assessment, shall be for the purpose of causing same to be assessed at its fair cash value as herein defined and decision of said board shall be final as to individual as sessments unless appeal is taken to the board of county commissioners on or before the first Monday in June next following. The decision of the board of county commissioners shall be final in all cases."

Section 2:

"The board of county commissioners of each county, or a majority hereof, shall constitute the board of equalization for the county and shall hold a session commencing on the first Monday in June of each year for the purpose of equalizing, correcting and adjusting the assessment rolls in their county between the different townships, by increasing or decreasing the aggregate assessed value of the property or any class thereof, in any or all of them to conform to the fair cash value thereof as herein defined: provided, that the county board of equalization may for the purpose of having the assessment of any city, town, village, or township corrected, order a

reassessment of any or all of the property therein."

It also enacted Chapter 38, Article 7, Section 1:

> "The Governor, State Auditor, State Treasurer, Secretary of State, Attorney General, State Examiner and Inspector and President of the Board of Agriculture shall constitute the State Board of Equalization, and said State Board of Equalization shall hold a session at the capital of the state commencing on the third Monday in June of each year. It shall be the duty of said board to examine the various county assessments and to equalize, correct and adjust the same as between the counties by increasing or decreasing the aggregate assessed value of the property or any class thereof, in any or all of them, to conform to the fair cash value thereof as herein defined and to order and direct the assessment rolls of any county in this state to be so corrected as to adjust and equalize the valuation of the real and personal property of the several counties in this state."

In 1910 the legislature of the State of Oklahoma amended Section 1 of Article 6 of Chapter 38 of the Session Laws of 1909, so as to read as follows:

> "The township assessor, the township clerk and the township treasurer shall compose the board of equalization for each township; the town or city assessor, mayor or president of the board of trustees, and city clerk shall compose the board of equalization for cities,

towns and villages, and said board shall meet on the third Monday of April of said year to examine the assessment rolls of such township, cities or towns, and to hear all complaints of persons who shall feel aggrieved by their assessment, and to correct, equalize and adjust the assessments therein by increasing or decreasing individual assessments or the aggregate assessments of such city, town, village or township, and if necessary they may require a re-assessment of any or all of the property therein. Such correction, equalization, adjustment or reassessment, shall be for the purpose of causing same to be assessed at its fair cash value as herein defined, and decision of said board shall be final as to individual assessment unless an appeal is taken to the board of county commissioners on or before the first Monday in June next following. Appeals from the board of county commissioners may be made to the county court in the county in which the property is located. But such appeal must be made within thirty days from the action of said board. Provided, however, that before the assessment of any individual as returned by the assessor shall be increased, the board of equalization shall give such individual at least five days' notice in writing to appear and show cause why such assessment shall not be increased * * *."

It will be noticed that the amended act of 1910 gives additional appeal from the board of county commissioners to the county court, but limits the right of appeal to thirty days after the action of the county commissioners. The same legislature in 1910 enacted Chapter 87 of the Session Laws of 1910, as follows:

"Section 1. Appeals may be taken from the county board of equalization to the county court of the county wherein the assessment is made, within thirty days after the adjournment thereof, and to the Supreme Court if from the state board, within sixty days after the adjournment of such board, but not afterwards; provided, that no matter shall be reviewed on appeal which was not presented to the board appealed from, and provided further, that every appeal shall state specifically the objections to the assessment and the relief sought."

Section 3 of the same chapter is as follows:

"The proceedings before the board of equalization and appeals therefrom shall be the sole method by which assessments or equalizations shall be corrected or taxes abated. Equitable remedies shall be resorted to only where the aggrieved party has no taxable property within the tax district of which complaint is made."

From the foregoing laws of the State of Oklahoma, it is apparent that any person who owned property in any county in the State of Oklahoma, assessed for the year 1910, in the event he felt aggrieved at the action of the assessor, could have appealed to the township equalization board for the purposes of redress of his grievance; and, in the event the township board failed to grant him relief, he had the right to appeal to the board of county commissioners, and ample time was given by the statutes then in force to permit him so to

do; and, under the law, as amended in 1910, which was in ample time for the plaintiff in error to have acquired rights thereunder; had it perfected its appeal to the board of county commissioners, an appeal might have been had from the board of county commissioners to the county court. It likewise had the right to present its grievances to the State Board of Equalization, and to appeal therefrom, in the event its request was not granted, to the Supreme Court of the state by following the mode prescribed by the statutes above quoted; but *it failed* to avail itself of any of the rights permitted by statute.

At the time of the institution of this suit, Chapter 87 of Session Laws 1910 was in force in the State of Oklahoma, and the legislature of the state had the authority, and the right, to see that equitable remedies should not be resorted to where the aggrieved party has taxable property within the tax district of which complaint is made, and the wisdom of that statute must be apparent to all who are acquainted with the efforts of heavy taxpayers of the state to avoid and delay the payment of taxes by resorting to injunctions and thereby crippling the government of the state and the various municipalities thereof in meeting the

obligations contracted upon the assumption that taxes would be paid as levied.

The Supreme Court of this state in a large number of cases have upheld these various statutes, and have said in no uncertain terms, that where a party has taxable property, within the district, he cannot resort to equitable proceedings to obtain relief, but must follow the methods provided by the statutes of the state in order to procure relief; and that that remedy, thus provided by the statute, was, and is, exclusive of all others.

The Supreme Court has said that the assessment of property and the equalization by the various boards were judicial acts, and that being judicial in their nature that the judgment of these boards could not be collaterally attacked, but an appeal must be taken therefrom to the courts as provided by law.

In re Western Union Tel. Co., 35 Okl. 626.

Hopper v. *County*, 143 Pac. 4.

Silven v. *Commissioners*, 92 Pac. 604.

London v. *Day*, 38 Okl. 428 (and cases therein cited).

Cooley on Taxation (3rd Ed.), 2nd Vol., pp. 1464-1466.

Stanley v. *Board Supervisors*, 30 L. Ed. U. S. Supreme Court Reports, p. 1000.

Thompson et al. v. *Brady et al.*, 143 Pac. 6.

Williams v. *Bank*, 38 Okl. 539.

Cooley on Taxation (3rd Ed.), Vol. 2, p. 1382.

Carroll v. *Gerlach*, 11 Okl. 151, 65 Pac. 844.

Finney County v. *Bullard*, 77 Kan. 349, 94 Pac. 129.

Western Union Tel. Co. v. *Douglas Co.*, 76 Neb. 666, 107 N. W. 985.

Shelton v. *Platt*, 139 U. S. 591, 11 Sup. Ct. 646, 35 L. Ed. 273.

Pittsburg, etc., Ry. Co. v. *Board Public Works*, 172 U. S. 32, 19 Sup. Ct. 90, 43 L. Ed. 354.

In re Western Union Tel. Co., 29 Okl. ~~680~~ 483

In re Appeal of McNeal, 35 Okl. 17.

Fast v. *Rogers et al.*, 30 Okl. 289.

These decisions uphold the right of appeal from the boards to the courts and vindicate the position of the trial court in this case to the effect that, plaintiff having failed to take advantage of his right of appeal from the action of the assessor, and the board, as prescribed by statute, could not be heard in a court of equity, for he had an adequate and complete remedy at law, and by reason of his own negligence failed to take advantage thereof.

However, before passing from this question we desire to refer to the opinion in *Williams* v. *The Bank*, 38 Okl. 539, where the Supreme Court

of Oklahoma, through Mr. Justice Kane, in passing upon the validity of Chapter 87 of the Session Laws of 1910, as applied to the rights of the bank in that case, from assessment complained of, for the year 1910, said:

> "But the contention is made that inasmuch as Section 1 did not go into effete until ten days after the adjournment of the county board of equalization, that remedy was not available, for the reason that the act is not retroactive, and therefore would not apply to the case at bar. This contention, however, does not apply to the failure of the plaintiff to appeal from the action of the State Board of Equalization, if its assessment was still in an unsatisfactory condition; it had full knowledge of its grievance against the county board long prior to the meeting of the state board, and the latter board had full authority in the premises to equalize, correct and adjust, by increasing or decreasing the assessed value of any class of property, to conform to the fair cash value * * *. Mr. Desty in his work on Taxation, Vol. 2, page 661, states the result of failure to follow remedies provided by law, as follows: 'Equity will not restrain the collection of a tax when there is a full and adequate remedy at law, even though fraud be alleged in the bill, where a mode is prescribed and a tribunal established by law to provide against an illegal tax complainant has a full and adequate remedy at law.'"

It is not contended, in this case, that the property of plaintiff in error was assessed at more than its actual cash value.

The Supreme Court of Oklahoma in the case of *The Bank* v. *Cloud*, reported in the 40th Okl. 623, held that where a bank intentionally returned a valuation of its property at 75 per cent. of its true value, for the purpose of taxation, and with the connivance of the board of county commissioners as the county board of equalization, seeks to have its property, together with all other property in the county, valued at 75 per cent. of its true value, for the purposes of taxation, and the State Board of Equalization raises the valuation on the bank's property to the true value thereof, a court of equity will not relieve such bank from its predicament, although some other taxpayers in the county may have profited and the bank failed to profit by such transaction, and that to grant the relief asked by the bank to place it upon an equality with other taxpayers in Garfield County, would have the effect of discriminating against the other taxpayers of other counties of the state, for the reason that it must not be presumed, nor is there any reason for such presumption, that any other county in the state pursued the same tactics, and

the aid of a court of equity cannot be invoked to bring about that result."

Respectfully submitted,

CHAS. J. KAPPLER.

JOHN EMBRY,
County Attorney of Oklahoma County, State of Oklahoma;

SAM HOOKER,
Assistant County Attorney.